



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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JAN 30 2008

MEMORANDUM FOR SECRETARY OF THE AIR FORCE

SUBJECT: Investigation Involving Major General Stephen M. Goldfein, U.S. Air Force, Vice Director, Joint Staff

We recently completed an investigation into alleged procurement irregularities, improper influence, and other misconduct involving the December 16, 2005, contract award by the 99th Contracting Squadron to Strategic Message Solutions (SMS) for \$49.9 million (contract number FA-4861-06-D-C001). The purpose of the contract was to obtain multimedia support and production services during performances by the Thunderbirds Air Demonstration Squadron. The contract was terminated for convenience on February 16, 2006, in the wake of a bid protest.

The investigation, conducted by the Defense Criminal Investigative Service (DCIS), initially focused on SMS and was declined for criminal prosecution by the Assistant U.S. Attorney, District of Nevada, on May 1, 2007, based on the information available at that time.¹ However, because of continuing concerns regarding potential procurement and ethical violations on the part of DoD personnel that were referred to us by the General Counsel, Department of the Air Force, DCIS continued its investigation to fully uncover the facts and circumstances surrounding the award to SMS.

The investigation found that the December 2005 award to SMS was tainted with improper influence, irregular procurement practices, and preferential treatment in possible violation of DoD 5500.7-R, "Joint Ethics Regulation (JER)," and standards of conduct applicable to Government-contractor relationships set forth in the Federal Acquisition Regulation (FAR).² Lower priced offers from qualified vendors and capabilities in-house were bypassed in an apparent effort to obtain services from [REDACTED] president of SMS, who had a longstanding relationship with senior Air Force officers and members of the Thunderbirds.³ In

¹ The Assistant United States Attorney (AUSA) focused on a possible false claim submitted by SMS; unauthorized release of proposal information by Source Selection Team members; possible receipt of bribes by Air Force personnel; and possible violations of the one-year "cooling off" period by General (Retired) Hal Hornburg, U.S. Air Force. The number of interviews conducted was limited by the AUSA, who restricted investigative work into potential ethical and regulatory violations until the May 2007 declination.

² Section 2635.101 of the JER, "Basic obligation of public service," states that employees shall not use public office for private gain and shall act impartially and not give preferential treatment to any private organization or individual. Similarly, Subpart 3.101 of the FAR, "Standards of conduct," states, "government business shall be conducted in a manner above reproach . . . with complete impartiality and with preferential treatment for none." Subpart 2.101 defines an "organizational conflict of interest," in part, as a situation where a person is unable to render impartial advice because of relationships with other persons.

³ [REDACTED] is a pilot, flies a vintage aircraft under the Heritage Flight Program at Thunderbird air shows, and was made an "Honorary Thunderbird" in 2004.

our view the inappropriate conduct accounts, in part, for the \$49.9 million award to SMS – an entity with minimal facilities, equipment, staff, and experience as a corporation in providing the multimedia production services of the nature required under contract.⁴ In short, SMS was a skeleton operation without the resources needed to undertake a contract effort of this magnitude.⁵

Responsibility for the flawed procurement is reasonably assigned to several individuals. The Contracting Officer acknowledged that he failed to properly evaluate SMS' financial standing. The Commander of the Thunderbirds, an advisor to the Source Selection Team (SST) and reporting senior for four members of the SST, expressed a strong preference for SMS early in the deliberative process. The Source Selection Authority acknowledged that SMS did not represent the best value for the Air Force, but he selected SMS because of the influence exerted by Major General (Maj Gen) Stephen M. Goldfein, U.S. Air Force, then Commander, Air Warfare Center, Nellis Air Force Base, and others. We recommend that you consider appropriate corrective action with respect to those and other lower-ranking officials who participated in this procurement, based on information provided in the attached report.

Because of our responsibility for addressing alleged misconduct on the part of senior officials pursuant to DoD Directive 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense," we gave particular attention to the role played by Maj Gen Goldfein in the process leading to the December 2005 contract award. In our view, Maj Gen Goldfein bears some responsibility for the flawed procurement because his early efforts to assist [REDACTED] in assembling a "demonstration" Thunderbird video and the influence he exerted during the source selection process. We provide the following evidentiary summary to support this conclusion:

- In January 2005 Maj Gen Goldfein met with [REDACTED] and other vendors to arrange a multi-media (sound-video) demonstration to be featured at the March 10, 2005, Thunderbird acceptance show.⁶ By e-mail dated January 30, 2005, Maj Gen Goldfein requested \$40,000 from the Air Combat Command (ACC) to fund this venture in addition to \$40,000 that ACC had previously provided. Sole source contracts were subsequently awarded to Framework Sound for music (\$40,000 on February 16, 2005) and Sports Link for video (\$49,300 on March 9, 2005). Evidence indicates that these were after-the-fact awards to compensate [REDACTED] and other vendors for work already completed based on assurances of reimbursement from Maj Gen Goldfein.

⁴ At the time of its incorporation in March 2005, the SMS staff consisted of four people: [REDACTED], president; General Hornburg, partner; [REDACTED], partner and counsel; and [REDACTED], partner. [REDACTED] and other contractors had previously worked with the Air Force to enhance music during air shows, but SMS never received any contracts to support the Air Force before the December 2005 award.

⁵ After receiving the award in December 2005, [REDACTED] was allowed to use Air Force facilities and staff in order to carry out work required under the contract.

⁶ The annual "acceptance show" precedes the Thunderbird performance season and is typically attended by the Commander, Air Combat Command, who approves the performance, and other high ranking Air Force officials.

- Maj Gen Goldfein, in collaboration with an associate of [REDACTED] worked through White House channels to obtain a Presidential testimonial for the Thunderbirds for use at the March 2005 show. The testimonial would not otherwise have been available to SMS. Although the testimonial (Government property) was not completed until after the March show, SMS obtained and used the testimonial in the DVD submitted as part of its bid proposal. The use of the testimonial in the SMS product reasonably suggested that SMS had a greater amount of professional credibility and celebrity access than it did, in fact, have.
- In April 2005 Maj Gen Goldfein self-invited himself to a meeting between [REDACTED] and General T. Michael Moseley, then Air Force Vice Chief of Staff, where [REDACTED] explained his ideas for Thunderbird visual effects. General Moseley arranged transfer of \$8.5 million to the Air Combat Command (ACC) to fund a contractual effort to cover the 2005 season.⁷ One week later SMS submitted an unsolicited proposal to ACC that was intended to result in a sole-source contract for the work. The day after [REDACTED] submitted his proposal, Maj Gen Goldfein requested ACC officials by e-mail to “prepare and execute contract ASAP.” Subsequently, ACC rejected the sole-source request in favor of competitive procurement.
- In conversations with the contracting officer, Maj Gen Goldfein emphasized that the contractor should have knowledge of the Air Force and the Thunderbirds, so that the Thunderbirds would not be burdened with orienting an unfamiliar contractor. As a result, the contracting officer elevated “Strategic Insight” to one of top two selection criteria, from its original status as a subcategory. SMS subsequently obtained a top score in the “Strategic Insight” category, which tipped the selection in its favor. In view of Maj Gen Goldfein’s work with [REDACTED] during the March 2005 video demonstration project, it is reasonable to infer that Maj Gen Goldfein knew, or should have known, that his recommendation provided an advantage to [REDACTED]
- Maj Gen Goldfein requested the Source Selection Authority to allow him “a vote” in the award process. In response, the Source Selection Authority appointed Maj Gen Goldfein an “advisor” to the Source Selection Team (SST) which evaluated proposals for the Thunderbird Air Show Productions Services Contract. Because six of the seven members of the SST were junior Air Force personnel serving at Nellis Air Force Base, they were subject to his influence. Evidence demonstrates that Maj Gen Goldfein expressed preference for SMS during the Final Selection Briefing that caused the Source Selection Authority to change his initial selection preference and award to SMS.

In that regard, three members of the SST recalled that Maj Gen Goldfein stated, “If I had a vote, I’d select SMS,” or words to that effect. Other witnesses recalled that Maj Gen Goldfein suggested that the scoring of contractor proposals identified a

⁷ The Thunderbird performance season generally runs from mid-March to early November annually.

winner and that he emphasized the need to go with the winner. In his interview with us, Maj Gen Goldfein confirmed that he made a statement regarding a “clear winner here” and that the Source Selection Authority immediately responded, “I’m awarding to SMS.”⁸ Three members of the SST recalled that the Source Selection Authority later acknowledged to them that he “caved” or “folded” in selecting SMS. The Source Selection authority, who told us he was extremely conscious of Maj Gen Goldfein’s presence during the final selection brief, testified that SMS did not represent the best value for the Air Force.

- Four days after the December 2005 contract award, Maj Gen Goldfein contacted the contracting officer to expedite payment to SMS of invoices totaling \$1.9 million, even though no services or work product had been received.⁹ Maj Gen Goldfein told us that he intervened after [REDACTED] asked him to look into “an issue with payments” that threatened to hold up progress. The contracting officer testified that Maj Gen Goldfein’s call to him was definitely unusual and that it influenced the payment process.

We acknowledge that some of Maj Gen Goldfein’s activities, as described above, individually do not violate regulations and may appear reasonable given top Air Force interest in enhancing the Thunderbird air show experience. However, when taken together, Maj Gen Goldfein’s activities displayed a pattern of behavior that gave an advantage to SMS in competing for this contract and so constituted preferential treatment. The evidence indicates that Maj Gen Goldfein enabled [REDACTED] to gain a competitive advantage by facilitating his participation in the Demonstration project and by injecting himself into the source selection process after earlier efforts to obtain a sole source contract with SMS failed. In short, we believe that the source selection process may not have selected SMS absent his influence.

During a follow-up interview on January 16, 2008, we offered Maj Gen Goldfein an opportunity to comment on the foregoing conclusion. During that interview, Maj Gen Goldfein vigorously disagreed with our assessment, asserting that the actions attributed to him above were separate and distinct events and cannot be combined to suggest that he purposefully orchestrated an award to SMS. He described [REDACTED] as a “casual acquaintance” rather than a friend. He stated that when he first discussed the audio-video concept with [REDACTED], he was thinking only to demonstrate to Air Force leadership a concept that he felt to be worthwhile. Having heard no reaction from the Air Force Chief of Staff after the March 2005 demonstration, Maj Gen Goldfein stated that he believed the issue was closed.

⁸ In our view, the scores did not identify a “clear winner,” as Maj Gen Goldfein suggested. For example, SMS and a second bidder received identical scores in all categories except “Strategic Insight,” where SMS was evaluated higher. However, the second bidder’s price was one-half that of SMS. Further, SMS was evaluated as posing “significant financial risk,” because of its inability to provide corporate financial data. The second bidder had no financial issues. The significant financial risk issue became apparent just days after contract award when SMS submitted invoices for \$1.9 million, indicating that immediate payment was needed to avoid work delay.

⁹ Section 32.904 of the FAR, “Determining payment due dates,” states that the due date for paying an invoice is generally the later of: (a) 30 days after receipt of a proper invoice, or (b) 30 days after Government acceptance of supplies or services.

He asserted that he did not assist [REDACTED] in presenting the demo at the Pentagon. Rather, he stated, after General Moseley, then the Air Force Vice Chief of Staff, invited [REDACTED] to brief the multi-media concept, he "self-invited" himself because "anything that related to the [Thunderbird] mission" was important to him. Maj Gen Goldfein also pointed out that he would not have known prior to the submission of bids that SMS was competing for the contract, and thus the "strategic insight" requirement could not have been created with SMS in mind. He emphasized that if this category were elevated, it was simply to ensure the Thunderbirds did not become teachers throughout the project.

Maj Gen Goldfein testified that his advice to the team was to stick with the process, and that he did not intend to influence the decision in any way. Instead, he stated, he made a choice to stay out of SST business, trusting in the contracting officer who was actively engaged on a regular basis. He described himself as a "trusting kind of guy" and a "trusting commander" telling people in big terms what the objective was, and then getting out of the way.

Regarding expediting payment to [REDACTED], Maj Gen Goldfein stated that [REDACTED] called him stating that he had an issue with not having been paid, and that Maj Gen Goldfein called contracting because he was "out of his zone." He asserted that it was not his intent to suggest paying SMS inappropriately, simply to "move the process along." In closing comments Maj Gen Goldfein reiterated that it was "simply not the case" that he had a willful intent to assist [REDACTED] in obtaining a contract, and that what might appear to an outside observer as a continual course of conduct was, in fact, a series of separate events that were not relevant to each other.

We provide this assessment of Maj Gen Goldfein's responsibility in the matter for such action as you deem appropriate. A response within 60 days will be appreciated. Should you wish to review additional documentation that was gathered during this investigation, please submit a written justification to this Office so that we may make appropriate arrangements.

Please contact me or Mr. Donald M. Horstman, Assistant Inspector General for Administrative Investigations, at (703) 604-[REDACTED] should you have any questions.


Claude M. Kicklighter

Attachment:
As stated

cc: Chairman, Joint Chiefs of Staff